

SAROJ & ORS.

v.

HET LAL & ORS.

(Civil Appeal No. 10321 of 2010)

DECEMBER 07, 2010

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

Motor Vehicles Act, 1966 – ss. 166 and 161(3)(a) – Compensation – Motorcycle driven by deceased, hit by vehicle driven in a rash and negligent manner, resulting in death of motorcyclist – Claim petition – Dismissed by Tribunal as also High Court – On appeal, held: Courts below ignored the admission by the owner of the vehicle that the vehicle belonging to him was involved in an accident with motorcycle and vehicle was driven by the driver – It cannot be said that the negligence being on part of the motorcyclist, there was no question of compensation and that it was a hit and run case – More so, even if it was a hit and run case, claimants entitled to at least Rs.25,000/- as per s.161 (3) (a) – Matter remitted back to tribunal as regards the liability for compensation on the part of driver, owner and insurance company – No fault compensation.

'JS', aged 34 years, was a registered medical practitioner and was earning Rs. 25,000/- p.m. on the fateful day, 'JS' was driving a motorcycle. The motorcycle was hit by vehicle, Tata 207 driven in a rash and negligent manner. 'JS' died on the spot. The appellants, legal representatives of 'JS', filed a claim petition under Section 166 of the Motor Vehicles Act, 1966 against respondent No. 1 - the driver, respondent No. 2 - the owner of the vehicle and respondent No. 3, the insurance company. The Tribunal dismissed the claim petition holding that the offending vehicle owned by respondent No. 2 and

A allegedly driven by respondent No. 1 was not involved in the accident at all. The High Court upheld the order. Therefore, the appellants-claimants filed the instant appeal:

B Remitting the matter to the tribunal, the Court

HELD: 1.1. The petition could not have been dismissed in totality. Presuming it to be a hit and run case, the appellants were entitled to at least Rs.25,000/- as per the provisions of Section 161 (3) (a) of the Motor Vehicles Act. Both the courts below failed to note the said provision. [Para 12] [521-A-B]

1.2. The courts below completely erred in giving the finding that it was a hit and run case and that the vehicle belonging to respondent No.2 was not involved in the accident. Insofar as that finding is concerned, it was an admitted position in the pleadings of respondent No.2 that Tata 207 vehicle was involved in an accident with the motorcycle which took place on 16.9.2005 at 3.30 p.m. and the said vehicle was being driven by respondent No.1. The admission in the pleadings itself is sufficient to hold that the vehicle belonging to respondent No.2 was involved in the accident. The said admission was never traversed by respondent No.2 and, thus, there was no occasion to hold that the said vehicle was not involved; and that it was a hit and run case. Not only the Tribunal but the High Court also ignored the vital admission on the part of respondent No.2. It was nobody's case that the admission of respondent No.2 was in collusion between respondent No.2 and the appellants. Thus, there was no occasion for holding that the vehicle was not involved in the accident and on that count exonerating the three respondents. [Para 12] [521-B-F]

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1.3. The admission by respondent No. 2 might not be binding vis-à-vis respondent No.1, the driver, who continued to take a stand that the vehicle being driven by him was not involved in the accident. This defence of respondent No.1 is understandable as admittedly he is facing the prosecution for causing the accident and the death thereby of deceased 'JS'. [Para 13] [521-G]

1.4. The counsel on behalf of respondent No. 3 cannot dispute the fact that there was an admission by respondent No.2 that the vehicle belonging to him was involved in an accident. It cannot be said that the negligence was only on the part of the motorcyclist and there would be no question of any compensation on that count. The tribunal did not consider the matter from the said angle. Thus, Therefore, the judgments are set aside the matter is remitted back to the Tribunal only on the question of liability for compensation on the part of respondent Nos. 1, 2 and 3, on account of the accident caused by Tata 207 vehicle with motorcycle and the death of 'JS' in the same. The matter is pending for the last five years. The appellants have not received any compensation up till now. Therefore, the Tribunal is directed to dispose of the matter within the stipulated time period in the light of the observations made regarding the questions like no-fault compensation along with other necessary questions. [Para 14 and 15] [522-A-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10321 of 2010.

From the Judgment & Order dated 15.5.2009 of the High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 4470 of 2008.

S. Balakrishna, S.N. Jha, Jasneet Kaur (for Subramonium Prasad), Gagan Gupta, S.L. Gupta (for Goodwill Indeevar) for the appearing parties.

A The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

B 2. In this appeal, the judgment of the High Court affirming the judgment of the Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') dismissing the claim of the claimants-appellants has been challenged. Shortly stated, the factual conspectus is as under:-

C Claimants-appellants are the legal representatives of one Joginder Singh who was a young man of 34 years. An accident took place on 16.09.2005 while deceased Joginder Singh was driving a motorcycle bearing registration No.HR-26-P/9413 while going to village Nimot from village Mandavar. As per the claim, the motorcycle met with an accident as it was hit by a D vehicle, Tata 207 bearing registration No. HR-38-L/6592 which was being driven in a rash and negligent manner. It is claimed that in that accident Joginder Singh died on the spot. He was claimed to be a registered medical practioner and that his monthly earning was Rs.25,000/- approximately. Therefore, a claim was filed under Section 166 of the Motor Vehicles Act E wherein the driver Het Lal, owner of the vehicle Pramod Kumar and the Oriental Insurance Company were joined as party respondents. The claim was opposed by the driver and he took the plea that no such accident ever took place though he admitted that he was the driver of aforementioned vehicle. In F his statement, however, the owner i.e. respondent No.2, while opposing the claim, admitted that his vehicle was engaged in the accident in paragraph three of his written statement. The part of paragraph 3 of the written statement of respondent No.2 is as under:

G "The present claim petition is not maintainable against the answering respondent in view of the facts mentioned in preliminary objection No.1 above and especially when the deceased was driving motorcycle No.HR-26-P-9413

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rashly, negligently at a reckless speed without wearing helmet, without holding effective and valid licence, hit Tata 207 bearing No.HR-38-L-6592 of respondent No.2 from behind as he could not control his speed and thus, the deceased himself was the author of the alleged accident and there was no fault on the part of respondent No.1 who was driving the Tata 207 with moderate speed, adopting traffic regulations and with valid, effective driving licence. Hence this petition is liable to be dismissed on this ground alone.”

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3. The same plea is repeated in the written statement while replying to paragraphs 1 to 13 of the claim petition practically in the same words as stated above. The owner of the vehicle also went on to oppose the petition on the ground that the claimants-appellants were not the only legal heirs of the deceased nor were the sufferers or dependant upon him and that they had filed the petition only to extract huge amount by way of compensation. The claims made by the claimants-appellants in their petition about the age and income of the deceased were also denied.

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4. Thus, it was clear that at least the owner of the vehicle admitted the claim made in the claim petition to the effect that the vehicle was engaged in an accident with the vehicle of the deceased and that it was being driven by respondent No.1 who was his driver. In support of their claim of the appellants, following issues were framed by the Tribunal, they being:-

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- (1) whether the accident took place due to rash and negligent driving of vehicle No. HR-38-L/6592 by respondent No.1?
- (2) whether the petitioners are entitled to compensation on account of death of Joginder Singh in the accident and, if so, to what amount and from whom?

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A (3) whether respondent No.1 was not holding a valid and effective driving licence at the time of the accident?

(4) Relief.

B 5. While respondent Nos.1 and 2 did not contest the claim and they were proceeded *ex parte*, it was only the insurance company, the third respondent who took part in the proceedings and tendered some documents to support their claim.

C 6. One Virender Singh was examined as PW-11 who was an eye-witness to the accident. He supported the fact of accident which took place near a bridge. He also asserted that the Tata 207 vehicle was being driven at a very high speed and in a rash and negligent manner and it hit a motorcyclist from behind. He also gave the correct registration number of the motorcycle. The only suggestion made to him was that he was not present at the time of the accident and he was a procured witness. The appellants also led the evidence that the driver, respondent No.1 was facing trial for causing accident in the Court of Smt. Ranjana Agrawal, Judicial Magistrate 1st Class, Gurgaon for offences under Sections 279 and 304A, Indian Penal Code (IPC). The Tribunal took the note that the First Information Report was filed after 18 hours of the accident by the brother of the deceased wherein it was claimed that his elder brother Joginder Singh who was riding the motorcycle No.HR-26-P/9413 was hit by some unknown vehicle and he died on the spot. The Tribunal also noted that this witness had done the further formalities of removing the dead body etc. The Tribunal then posed a question to itself as to how and under what circumstances the police came to know that accident was caused by the Tata 207 vehicle belonging to respondent No.2 and that at the time of the accident, it was being driven by respondent No.1. The Tribunal noted that one Dhani Ram of village Sanpla was present at his house when the first respondent, who was the son of his brother-in-law, came to him and asked him to produce him before the police saying that

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the accident in question was caused by him. Dhani Ram, on this, asked him to bring the offending vehicle which he brought. That is how Het Lal produced himself on 18.9.2005 to the police along with the vehicle. The Tribunal questioned this and doubted this story of Dhani Ram. According to the Tribunal, there was no reason for respondent No.1 to go to Dhani Ram and make the request, as he did. The Tribunal also drew an adverse inference on account of non-examination of Dhani Ram. The Tribunal also noted the fact that in the charge-sheet, Exhibit P-9, Virender Singh was initially not cited as a witness. The Tribunal, therefore, deduced that the alleged confession by respondent No.1 to Dhani Ram was a weak type of evidence. Virender Singh was introduced as eye-witness and his name was added with different ink in the report in last at serial No.11. The Tribunal did not accept his evidence on the ground that Virender Singh did not take any step to go to the police after having seen the accident and his statement was recorded as late as after 20 days. The Tribunal also refused to comment on the fact that respondent No.1 was facing a trial for the offence under Sections 279 and 304A, IPC. Lastly, the Tribunal wrote a finding that it was apparent that it is a case of hit and run by some unknown vehicle and the alleged unknown vehicle was a introduced vehicle to claim compensation.

7. In view of this, the claim was dismissed.

8. The claimants-appellants came to the High Court and the High Court virtually confirmed the order repeating the findings given by the Tribunal including a finding that the offending vehicle owned by respondent No.2 and allegedly driven by respondent No.1 was not involved in the accident at all.

9. Shri Balakrishnan, learned senior Counsel appearing on behalf of the appellants pointed out firstly that both the Courts below have totally failed to apply their mind to the pleadings and that has resulted in grave miscarriage of justice. He pointed out that the involvement of the Tata 207 vehicle owned by

A respondent No.2 in this very accident was an admitted fact which was admitted in pleadings and as such both the Courts below were wholly unjustified in holding that the said vehicle was not involved in the accident and that it was a hit and run case. The learned Counsel urged that the finding that this was a hit and run case where the vehicle, Tata 207 was not involved was a mere imagination on the part of the Tribunal which even the High Court failed to note. The learned Counsel urged that in fact it was an admitted position that respondent No.1 was being prosecuted for causing the accident and death while he was driving the very same vehicle. The learned Counsel further urged that there was nothing unnatural in the evidence of Virender Singh and merely because his statement was recorded later on, that by itself was no reason to dis-believe the evidence as he was a totally dis-interested witness. The learned Counsel also pointed out that non-examination of Dhani D Ram was also of no consequence for the simple reason that police indeed found that the accident had taken place wherein the said vehicle, Tata 207 was involved on the one hand and the motorcycle driven by Joginder Singh on the other. The learned Counsel, therefore, pointed out that the judgments of E the Courts below could not be sustained.

10. On the other hand, Shri S.L.Gupta, learned Counsel appearing on behalf of respondent No.3, Insurance Company tried to support the findings and also admitted that even if this F was a case of hit and run accident, even then the appellants were liable to be paid the no-fault liability under Section 161 of the Motor Vehicles Act which admittedly was not paid to them.

11. Shri Gagan Gupta, learned Counsel appearing on behalf of respondent No.1, driver, however, denied that any G accident had ever taken place or that the driver was involved in any accident. Respondent No.2, however, did not choose to come before us.

H 12. On considering the rival arguments, it must be said that

the petition could not have been dismissed in totality. Presuming it to be a hit and run case, the appellants were entitled to at least Rs.25,000/- as per the provisions of Section 161 (3) (a) of the Motor Vehicles Act. Therefore, both the Courts below have obviously failed to note this provision. But that is not the end of the matter. In our opinion, both the Courts below have completely erred in giving the finding that it was a hit and run case and that the concerned vehicle belonging to respondent No.2 was not involved in the accident. Insofar as that finding is concerned, it was an admitted position in the pleadings of respondent No.2 that firstly, the Tata 207 vehicle bearing registration No. HR-38-L/6592 was involved in an accident with the motorcycle bearing registration No.HR-26-P/9413 which took place on 16.9.2005 at 3.30 p.m. and secondly, the said vehicle was being driven by respondent No.1. This admission in the pleadings which we have quoted in the order was itself sufficient to hold that the concerned vehicle belonging to respondent No.2 was involved in the accident. This admission was never traversed by respondent No.2 and, thus, there was no occasion to hold that the said vehicle was not involved and that it was a hit and run case. It is surprising that not only the Tribunal but the High Court also should have ignored the vital admission on the part of respondent No.2. It was nobody's case that this admission of respondent No.2 was in collusion between respondent No.2 and appellants. Once this position is clear, there is no occasion for holding that the vehicle was not involved in the accident and on that count exonerating the three respondents.

13. In strict sense, this admission may not be binding vis-à-vis respondent No.1, the driver, who continued to take a stand that vehicle being driven by him was not involved in the accident. This defence of respondent No.1 is understandable as admittedly he is facing the prosecution for causing the accident and the death thereby of deceased Joginder Singh on 16.9.2005 at 3.30 p.m.

A 14. Shri Gupta, learned Counsel could not dispute the written statement, copy of which is filed before us and the fact that there was an admission by respondent No.2 that the vehicle belonging to him was involved in an accident.

B 15. It is obvious that both the Courts below have failed to note this fact. The judgments, therefore, would have to be set aside and the matter would have to be remitted back to the Tribunal to decide the liability of the respondents on account of the accident caused by Tata vehicle No.207 bearing registration No. HR-38-L/6592 with motorcycle bearing registration No.HR-26-P/9413 and the death of Joginder Singh in the same. It was tried to be feebly argued that under any circumstances, the negligence was only on the part of the motorcyclist and there will be no question of any compensation on that count. We are afraid, we cannot appreciate this. The Tribunal has not considered the matter from this angle. It is for this reason that we are inclined to remand the matter back to the Tribunal only on the question of liability for compensation on the part of respondent Nos. 1, 2 and 3. The matter is pending for the last five years. It is an admitted position that the appellants have not received any compensation up till now. Therefore, the Tribunal shall be well advised to dispose of the matter within six months from the date on which this order is received by the Tribunal. The Tribunal shall hear the parties again and shall dispose of the matter in the light of the observations we have made above regarding questions like no-fault compensation along with other necessary questions. The appeal is allowed in these terms. The costs are assessed at Rs. 25,000/-.

G N.J.

Appeal allowed.